

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 13

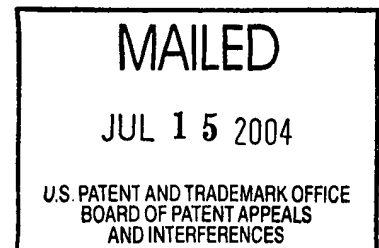
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte STEVEN R. BARD

Appeal No. 2003-1903
Application No. 09/619,219

ON BRIEF



Before GARRIS, HAIRSTON and JEFFREY T. SMITH, *Administrative Patent Judges*.
JEFFREY T. SMITH, *Administrative Patent Judge*.

DECISION ON APPEAL

Applicant appeals the decision of the Primary Examiner finally rejecting claims 1-3, 6-13 and 15-30 all of the pending claims. We have jurisdiction under 35 U.S.C. § 134.¹

¹ In rendering this decision, we have considered Appellant's arguments presented in the Brief filed January 22, 2003 and the Reply Brief filed May 20, 2003.

BACKGROUND

Appellant's invention relates to a method of detecting the coupling of a power sink to a power source, requesting the power class indication from the sink and using the power class indication to determine whether to supply power to said sink.

Appellant's invention also relates to an article comprising a medium that stores instructions that enable a processor-based system to perform the described method. The scope of Appellant's invention can be ascertained from claims 1 and 11 which are reproduced from the Brief below:

1. A method comprising

detecting the coupling of a power sink to a power source;

automatically requesting a power class indication from the sink; and

using said power class indication to determine whether to supply power to said sink.

11. An article comprising a medium storing instructions that enable a processor-based system to:

detect the coupling of a power sink to a power source;

request a power class indication from the power sink; and

determine whether the available power on said source is sufficient to supply the power needs of said power sink.

CITED PRIOR ART

The Examiner cited the following reference:²

Oprescu et al. (Oprescu)	5,842,027	Nov. 24, 1998
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THE REJECTION

The Examiner rejected claims 1-3, 6-13 and 15-30 under 35 U.S.C. § 103(a) as obvious over Oprescu. (Answer, pp. 3-6).

Appellant has indicated, Brief page 7, that claims 1, 2, 6-12 and 15-29 may be grouped together and claims 3, 13 and 29 may be grouped together and claims 8 to 13 stand or fall together. We will consider the claims separately only to the extent that separate arguments are of record in this appeal. Note *In re King*, 801 F.2d 1324, 1325, 231 USPQ 136, 137 (Fed. Cir. 1986); *In re Sernaker*, 702 F.2d 989, 991, 217 USPQ 1, 3 (Fed. Cir. 1983); 37 CFR § 1.192(c)(7)(2002).

We have carefully reviewed the claims, specification and applied prior art, including all of the arguments advanced by both the Examiner and Appellant in support of their

² The Examiner also cited the following references in support of the statement of Official Notice taken in the rejection of the claims:

Tateyama et al. (Tateyama)	6,425,019	Jul. 23, 2002 (filed February 17, 1998)
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Anderson, D., FireWire System Architecture, Second Edition: IEEE 1394a, 1999, pp. 1-64, 427-429.

respective positions. This review leads us to conclude that the Examiner's § 103 rejection is well founded. *See In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1471-1472, 223 USPQ 785, 787-788 (Fed. Cir. 1984). We affirm primarily for the reasons advanced by the Examiner and add the following primarily for emphasis.

DISCUSSION

The subject matter of claim 1 is directed to a method comprising detecting the coupling of a power sink to a power source. The specification describes a power sink and a power source in the first paragraph of page 3, which is reproduced below:

A power source is any device capable of providing a source of power to a power sink. A power source may be fixed in that it supplies a specific voltage level at a specific amperage level. A power source may be dynamic in that it has the capability of altering either or both of its voltage level or current capacity. A power sink is any device that consumes energy provided by a power source. A physical connection between the power source and the power sink includes a delivery mechanism for power to the sink and a communication medium between the two.

The Examiner found that Oprescu discloses a power management system that during initialization determines the components (power sinks) connected to a bus and the power requirements for these components. (Answer, p. 3). Oprescu discloses during initialization the power manager receives and stores information on the devices connected to the bus. The information is provided in the form of data packets which includes the power requirements

of the devices. (Col. 7, ll. 17-33). Oprescu discloses that the data can be provided by the devices themselves. (Col. 7, ll. 34-35). Power usage requests received from devices connected to the bus are granted or denied by the power management system based on the determination of available power. (Col. 8). The Examiner took official notice that requesting data, including power class information, from the components on the bus was known. (Answer, p. 3). In support of the official notice taken and in response to Appellant's arguments the Examiner in the Final rejection cited the Anderson and Tateyama references. (Final Rejection, pp. 5-6). The Examiner concluded that the inclusion of power class information in the data provided to the power manager would have been obvious to a person of ordinary skill in the art at the time the invention was made. (Answer, pp. 3-4).

Appellant argues that Oprescu alone fails to suggest providing power class information and therefore the Examiner has not made a *prima facie* case of obviousness. (Brief, pp. 7-8). Appellant also argues that the rationale to modify Oprescu is based on hindsight reasoning. (Brief, p. 8).

Appellant's arguments are not persuasive. Appellant has indicated that an example of the power class information may be given in terms of the voltage and current (i.e., power requirements) for the device. (Brief, p. 5, second full paragraph). As stated above, Oprescu

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discloses the information provided from the devices connected to the bus during initialization includes the power requirements for the devices.

Regarding the subject matter of claim 3, Appellant argues “there is nothing in the material in Oprescu relied by the Examiner to substantiate the argument that Oprescu obtains a self-identifier packet from the sink.” (Brief, p. 9).

Appellant’s argument is not convincing for the reasons provided by the Examiner in the Answer. (Answer, pp. 4 and 7). Moreover, the specification, page 6, discloses that an example of the self-identifier packet provides the device’s identity, its location and its power requirements. This information appears to be the same as the information contained in the data packets described in column 7 of Oprescu.

Based on our consideration of the totality of the record before us, having evaluated the *prima facie* case of obviousness in view of Appellant’s arguments, we conclude that the subject matter of claims 1-3, 6-13 and 15-30 would have been obvious to a person of ordinary skill in the art from the teachings of the cited prior art for the reasons stated above and in the Answer.

OTHER ISSUES

Appellant in the Reply Brief argues:

There can be no serious doubt that the ground for rejection in the final rejection was a Section 103 rejection based solely on Oprescu. However, in the Examiner’s response to [the] argument, the Examiner now cites Tateyama

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and Anderson which were never before relied on. Therefore, the reliance on these new references is improper and should be stricken.

To avoid any possibility of waiver, the Applicant declines to address these references. However, if the Board for some reason believes that the citation in the Examiner's Answer is appropriate, it is believed that the Applicant should be afforded some opportunity to address these newly cited references. (Page 2).

Appellant's discussion of the facts regarding the citation of the Tateyama and Anderson references is not accurate. As stated above, in support of the official notice taken and in response to Appellant's arguments the Examiner in the Final rejection, pages 5 and 6, cited and discussed the Anderson and Tateyama references. Thus, we decline Appellant's request to be afforded an opportunity to address the Tateyama and Anderson references.³

CONCLUSION

The Examiner rejection of claims 1-3, 6-13 and 15-30 under 35 U.S.C. § 103(a) as obvious over Opreescu is affirmed.


³ If Appellant believed that the actions taken by the Examiner created a new rejection, this issue should have been petitioned under 37 CFR § 1.181 to the Commissioner.


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Time for taking action

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED


BRADLEY R. GARRISS
Administrative Patent Judge


KENNETH W. HAIRSTON
Administrative Patent Judge


JEFFREY T. SMITH
Administrative Patent Judge

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